

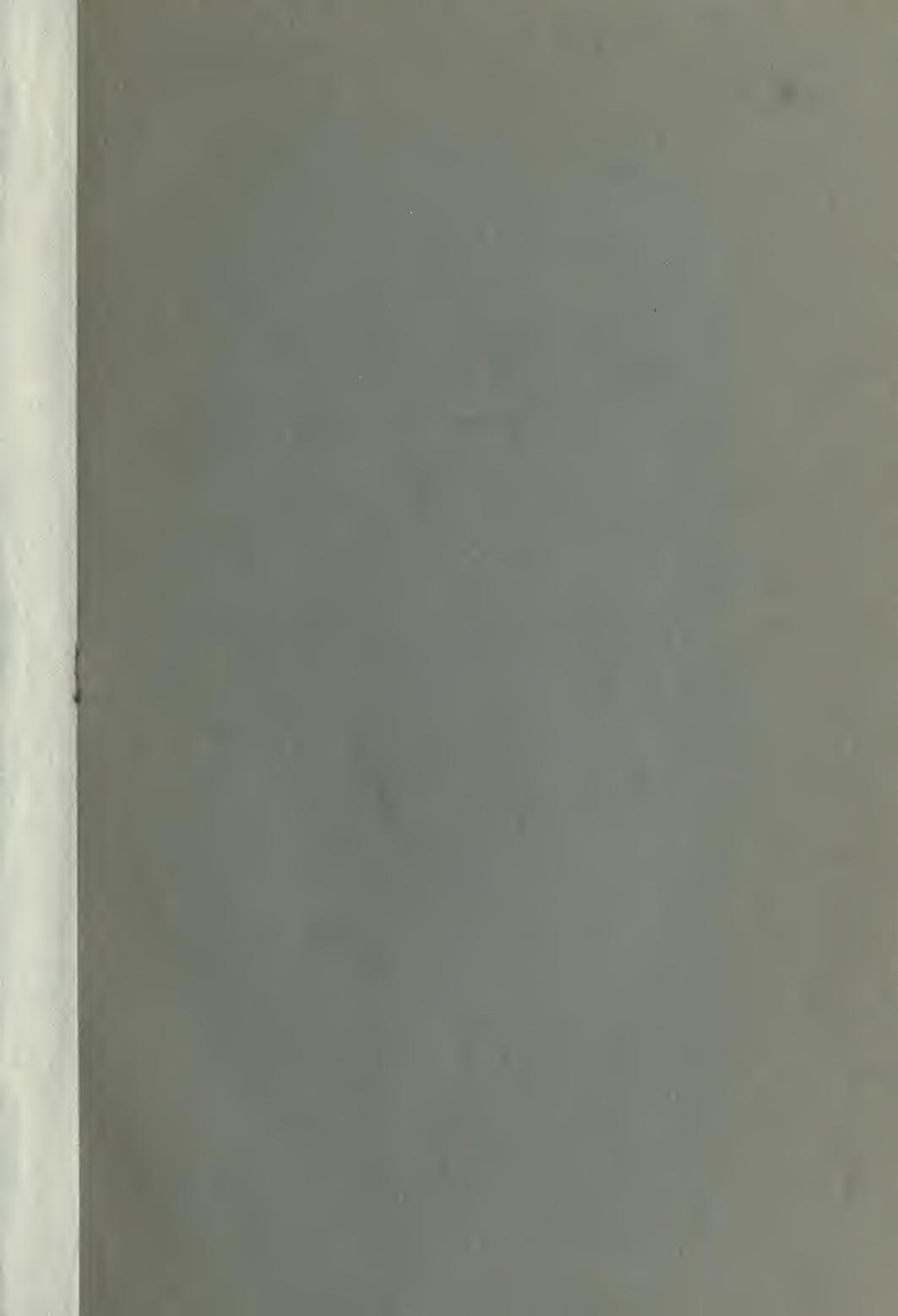
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IRRIGATION
AND
WATER RIGHTS

THE NEW LAW

As Amended by the Eleventh Session of the
Legislature of the State of Utah

1915

STAR PRINTING COMPANY
SALT LAKE CITY

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TITLE 40.

IRRIGATION AND WATER RIGHTS

CHAPTER 1.

State Engineer. Water Rights on Streams, Etc.

Section 1261. Office of State Engineer created. Powers and duties. There shall be a State Engineer, who shall be appointed by the Governor of the State to be confirmed by the Senate. He shall hold his office for the term of four years and until his successor shall have been appointed and qualified. He shall have general supervision of the waters of the State and of their measurement, apportionment and appropriation, and of all division superintendents and district supervisors. He shall have power to make and publish such rules and regulations as he may deem necessary from time to time to fully carry out the provisions of this title and secure the equitable and fair apportionment of the water according to the respective rights of appropriators. No person shall be appointed to the office of State Engineer who has not such theoretical knowledge and practical experience and skill as shall fit him for the position. R. S. '98, Sec. 2451; '01, p. 141; '03, p. 88; '05, p. 145.

1262. Salary and allowances. The State Engineer shall receive a salary of three thousand dollars per annum, payable in quarterly installments by the State Treasurer upon warrants drawn by the State Auditor. When the State Engineer is called away from his office on official business, he shall be entitled to his actual traveling expenses, which shall be paid out of any money appropriated for that purpose, on the certificate of said State Engineer, approved by the State Board of Examiners. R. S. '98, Sec. 2451; '01 pp. 142, 143; '03, p. 89; '05, p. 145.

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1263. **Office at Capital.** The State Engineer shall keep his office at the State capital. R. S. '98, Sec. 2451; '01, p. 142; '03, p. 89; '05, p. 146.

1264. **Oath and bond.** Before entering upon the duties of his office, the State Engineer shall take and subscribe an oath before some officer authorized by the laws of the State to administer oaths, to faithfully perform the duties of his office. He shall file with the Secretary of State said oath and his official bond in the penal sum of five thousand dollars, with not less than two sureties, to be approved by the State Board of Examiners, and conditioned for the faithful discharge of the duties of his office, and for the delivery to his successor or other officer appointed by the Governor to receive the same, of all moneys, books and other property belonging to the State then in his hands or under his control, or with which he may be legally chargeable as such officer. R. S. '98, Sec. 2451; '01, p. 142; '03, p. 89; '05, p. 146.

1265. **Report to Governor.** The State Engineer shall prepare and render to the Governor biennially, and oftener if required, full and true reports of his work relating to the matters and duties devolving upon him by virtue of his office, which biennial report shall be delivered to the Governor on or before the 31st day of December of the year preceding the regular session of the Legislature. He shall become conversant with the waterways of the State, and its needs as to irrigation matters, and in his reports to the Governor he shall make such suggestions as to the amendment of existing laws or the enactment of new laws as his information and experience shall suggest. He shall keep on file in his office full and proper records of his work, including all field notes, computations, and facts made or collected by him, all of which shall be duly certified by him, and be part of the records of his office and the property of the State. All records, maps, and other papers recorded and filed in the office of the State Engineer shall be open to the public during business hours, and copies thereof, certified by said engineer, shall be furnished on payment of the fees provided for by Section 970x. R. S. '98, Sec. 2458; '01, p. 143; '03, p. 89; '05, p. 146.

1266. **Duties of engineer.** May be co-operative with National Government. The State Engineer shall make a complete hydrographic survey of each river system and water source of the State, beginning such work upon those streams and sources

which are most used for irrigation, and from the data so obtained the State Engineer shall construct maps, which shall exhibit the essential facts relating to the supply, diversion, and use of the water of each of such river systems or water sources. He shall also collect such other facts as will, in his judgment, aid in ascertaining the existing rights to the use of the water and in determining the volume of the surplus or unappropriated water, if any, of each of such streams or sources. He shall have general supervision of the appropriation of all surplus or unappropriated water in the manner provided by law. Said surveys and collections of facts shall include the location of all suitable sites for dams and reservoirs, and a determination of the approximate capacity and cost of each. In doing such work, the State Engineer may co-operate with the agencies of the National Government engaged in similar work within the State, for the purpose of interchanging information and avoiding the unnecessary duplication of work. The State Engineer shall have a seal which he shall affix to all certificates issued from his office. R. S. '98, Sec. 2452; '01, p. 142; '03, p. 89; '05, p. 146.

1267. **Id. Notice to be given.** Before commencing the hydrographic survey of any river system or water source, the State Engineer shall cause notice to be published in some newspaper having general circulation on said river system or water source, stating the time and place of beginning said survey, and said notice shall be published continuously in said newspaper for a period of not less than fifteen days immediately prior to the commencement of said work. '03, p. 90; '05, p. 147.

1268. **Must examine plans of dams exceeding five feet in height, and inspect dams.** Duplicate plans, drawings, and specifications for any dam above five feet in height, across the natural channel of a running stream, or of any other dam intended to retain water above ten feet in height, shall be submitted to the State Engineer for his approval, who shall examine such plans, drawings, and specifications, and, if he approves the same, he shall return one copy of each such plans, drawings, and specifications, with his approval, to the party or parties submitting the same, and file the other in his office. If the State Engineer disapproves any of such plans, drawings, or specifications, he shall return the same, with his reasons for such disapproval. The State Engineer shall have authority to keep an inspector on

any such dam during the construction thereof, and to see that the work is done in accordance with the plans, drawings, and specifications, and the State Engineer may require the parties constructing the same to make any additions or alterations during the construction which he considers necessary for the security of the work, the safety of persons, or the protection of property. Any person, corporation, or association beginning the construction of any such dam before the plans, drawings, and specifications shall have been submitted to and approved by the State Engineer, or proceeding with such work in the absence of an inspector appointed by the said engineer, or who shall fail to comply with any of the requirements made by him in pursuance of this section, shall be guilty of a misdemeanor. R. S. '98, Sec. 2453; '01, p. 146; '03, p. 90; '05, p. 147.

1269. **Id. Dam or works examined, when.** Should any person, corporation, or association residing on or owning land in the neighborhood of any completed dam or diverting works, apply to the State Engineer in writing, requesting an examination of such dam or works, the State Engineer may order an examination thereof. Before doing so, he may require the applicant for such examination to deposit a sum of money sufficient to pay the expenses of the examination, and in case the application appears to him not to have been justified, he may cause the whole or part of such expense to be paid out of such deposit. In case the request appears to the State Engineer to have been justified, he may require the owner of the works to pay the whole or any part of the expenses of such examination. R. S. '98, Sec. 2456; '01, p. 146; '03, p. 90; '05, p. 148.

1270. **Id. May inspect ditches, etc., and require alteration.** The State Engineer shall have authority to examine and inspect, during construction, any ditch or other diverting works, and, at the time of such inspection, he may order the parties constructing the same to make any addition or alteration which he considers necessary for the security of such works, the safety of persons, or the protection of property. Any person refusing or neglecting to comply with such requirements of the State Engineer shall be guilty of a misdemeanor. But the provisions of sections 1268-1270 shall not apply to works constructed by the National Government. '03, p. 91; '05, p. 148.

1271. **State Engineer to bring action to determine water rights; jurisdiction of District Court.** When the State Engineer

has completed the hydrographic survey of any river system or water source, he shall file a written statement with the clerk of the district court of the county in which the same is situated, or if the system or source extends into more than one county, the statement should be filed in any county which embraces any part of such river system or water source that the State Engineer shall select as most convenient for the water users of the system or source. Said statement shall set forth the fact of the completion of such survey, the names and postoffice addresses of all persons, corporations, and associations using water of said river system or water source, so far as the same are known to the State Engineer, and shall contain such other facts and information as he may deem necessary. On the filing of such statement, the district court in the county where the same is filed shall have exclusive jurisdiction to determine all water rights on said river system or water source, in accordance with the provisions of this Title. '01, p. 143; '03, p. 91; '05, p. 148.

1272. **Id. Notice to be given to claimants to file statements.** Within thirty days after the filing of the statement mentioned in the next preceding section, the clerk of the court in which the same shall be filed must give public notice that all persons claiming the right to the use of any water of said river system or water source must file a written statement with the clerk of said court, within six months after the first publication of said notice, setting forth their respective claims to the use of such water, which notice shall be published at least once a week for three successive months in some newspaper printed and published within the boundaries of said river system or water source and having a general circulation therein; or, if there be no such newspaper, then it shall be published in some newspaper printed and published in this State and having a general circulation on said river system or water source. The clerk of said court shall also mail, by registered letter, to each of the persons, corporations, or associations whose names and addresses are given in such statement filed by the State Engineer, a copy of said notice, and a blank form on which said claimant shall present, in writing, as provided in the next succeeding section, all the particulars relating to the appropriation of the water of said river system or water source to which he lays claim. '03, p. 91; '05, p. 148.

1273. **Id. Claimants to file statements of water rights with**

the Court. Each person, corporation or association claiming the right to use any water of said river system or water source shall, within six months after the first publication of the notice provided for in the next preceding section, file in the office of the clerk of the court giving said notice, a statement in writing, which shall be signed and certified by the oath of the claimant, and shall include as near as may be the following: The name and postoffice address of the person, corporation, or association making the claim; the nature of the use on which the claim of appropriation is based; the flow per second of water used and the time during which it has been used each year; the name of the stream or other source from which the water is diverted; the place on such stream or source where the water is diverted, and the nature of the diverting works; the date when the first work for diverting the water was begun, and the nature of such work; the dimensions, grade, shape, and nature of the diverting channel, as originally constructed; the date when the original diverting channel was completed; the date when the water was first used, the flow per second and the time during which the water was used the first year; the date and nature of each subsequent change made in the original diverting channel; the flow per second of the water used and the time it was used each year between each of the changes so made, and the dimensions, grade, shape, and nature of the present diverting channel; the place where and the manner in which the water was first used; the nature of each subsequent change in the place or manner of use, and the place and manner of present use; and such other facts as will clearly define the extent and nature of the appropriation claimed. If the water claimed to have been appropriated is used for irrigation, the statement shall show, in addition to the above required facts, the area of land irrigated the first year and each subsequent year; the total area at present irrigated, and its location in the section, township, and range wherein it is situated; the character of the soil and the kind of crops raised during the first year of use and the first year after each subsequent change of channel, and during the last year in which the water was applied.

If the water claimed to have been appropriated is used for developing power, the statement shall show, in addition to the above required facts, the number, size, and kind of water wheels employed; the head under which each wheel is operated; the extent of the power produced, and the purposes for which and

the places where it is used; and the point where the water is returned to the natural stream.

If the water claimed to have been appropriated is used for mining, the statement shall show, in addition to the above required facts, the name of the mine and the mining district in which it is situated; the nature of the material mined, and the place where the water is returned to the natural channel of the stream. Within sixty days after the expiration of the six months allowed for filing statements of claims, the State Engineer shall tabulate the facts contained in the different statements filed; a copy of said tabulation shall be immediately filed in the office of the clerk of said court, and a copy in the office of the county recorder of each county which embraces any part of said river system or water source. '03, p. 92; '05, p. 149.

1274. **Id. Statement to be filed. Failure to make statement a bar.** The clerk of said court shall enter the statement in a book to be kept for that purpose and shall file and preserve the same in his office, noting the date of filing. The filing of each statement shall be considered notice to all persons of the claim of the party making the same, and any person failing to make and deliver such statement of the claim to the clerk of the court within six months after the first publication of the notice provided for in the next preceding section shall be forever barred and estopped from subsequently asserting any rights theretofore acquired to the use of water of said river system or water source, and shall be held to have forfeited all rights to the use of said water theretofore claimed by him; provided, that any claimant upon whom no other service of said notice shall be made than by publication in the newspaper may apply to the court for permission to file a statement of claim after the time therefor has expired, and the court or judge thereof, may extend the time for filing said statement, not exceeding one year from the first publication of said notice; but, before said time is extended, the applicant shall give notice by publication in some newspaper having general circulation on said river system, to all other persons interested in the water of that river system or water source, and shall make it appear to the satisfaction of the court that during the pendency of the proceedings he had no actual notice thereof in time to appear and file a statement and make proof of his claim; and all parties interested may present affidavits as to the matter of actual notice of application. '03, p. 93; '05, p. 150.

1275. **Id. Referee to be appointed.** At the expiration of six months after the first publication of the aforesaid notice, the district court of the county in which said statements of claim have been filed may appoint a referee or referees, not exceeding three, to take testimony and determine the rights of said claimants to the use of the water of said river system or water source, as in other equity cases. Any claimant may object to the appointment of any person as referee for the same cause for which challenges for cause may be taken to a petit juror in the trial of a civil action. Such objection must be heard and disposed of by the court, or a judge thereof, and affidavits may be read and witnesses examined concerning the same. '03, p. 93; '05, p. 151.

1276. **Id. Oath. Power of referee.** The referee or referees, before proceeding to hear any testimony, must be sworn well and truly to hear and determine the facts and issues referred to them, and true findings render according to the evidence, and he or they shall have power to administer oaths to all witnesses produced before him or them. '03, p. 93; '05, p. 151.

1277. **Id. Statements in place of pleadings. Maps and records of engineer's office evidence.** The statements filed by the claimants shall stand in the place of pleadings, and issue may be made thereon. They shall, unless the court determines the matter itself without a reference, be referred and delivered to the referee or referees, with all other files and papers relating to water claims of said river system or water source, including the statement and map filed by the State Engineer, who shall, before the expiration of the six months allowed for filing statements of claim, as aforesaid, file with the clerk of said court, and with the county recorder of each county which embraces any part of said river system or water source, a copy of the map of said river system or water source, made in pursuance of his survey thereof; and whenever requested so to do, the State Engineer shall furnish the court or referee or referees with any information which he may possess, or copies of any of the records of his office which relate to the water of said river system or water source; and in all proceedings for the determination of the rights of claimants to the water of said river system or water source, the said maps and records, or certified copies thereof, shall be competent and *prima facie* evidence of the facts stated therein or delineated thereon. '03, p. 93; '05, p. 151.

1278. **Id. Amendments permitted. Powers of referee.** The referee or referees shall have power to allow amendments to any statement or pleadings, as the court might do, and upon the same terms and with like effect. He or they shall have power, and it shall be the duty of the court, or referee or referees to take testimony at such times and places within the boundaries of the river system or water source as may be convenient to the respective claimants interested, and the court, or referee or referees, shall determine the rights of all said claimants as hereinafter provided. The court, referee or referees shall give not less than fifteen days' notice to the claimants, stating when and where he or they will begin to take testimony; said notice shall be published in some newspaper having general circulation on said river system or water source; and, upon the date named in the notice, the court, referee or referees shall begin to take the said testimony, and shall continue the same until all the testimony relating to claims to water of said river system or water source is completed; provided, that a notice shall be served upon each claimant at least fifteen days before the testimony upon his or its claim, stating the time and place, when and where such testimony will be taken; and said notice shall be served in the same manner as a summons issued out of the district court. But he or they may grant adjournment from time to time as occasion may require and during all of said time the map or maps and other records furnished by the State Engineer, as hereinbefore provided, shall be opened to the inspection of all parties interested. '03, p. 94; '05, p. 151.

1279. **Id. Any interested party may contest...** Any person, corporation, or association owning any irrigation works, or claiming any interest in the water of said river system or water source, may contest the rights of any person, corporation, or association that has filed statements of claim for any water of said river system or water source, by filing a written statement of the grounds of such contest with the clerk of said court, within thirty days after the filing of the tabulation of facts provided for in section 1273; which statement of contest shall be verified by the oath of the contestant. Upon the filing of said contest the referee or referees shall fix the time for hearing the same, which date shall be not less than thirty days nor more than sixty days from the time when the notice is served on the party, which notice and the return thereof shall be made in the same manner

as summons is served in civil actions in the district courts of this State. '03, p. 94; '05, p. 152.

1280. Subpoenas for witnesses. The referee or referees shall have power to issue subpoenas to witnesses which shall be served in the same manner as subpoenas issued out of the district court, and all witnesses so subpoenaed shall attend and testify, and produce books and papers and documents, as required, before such referee or referees, and said witnesses shall receive the same fees as in civil cases in the district court, to be paid by the party or parties against whom the contest shall be finally determined. '03, p. 94; '05, p. 152.

1281. Id. Referees' findings. On the completion of the evidence, the referee or referees shall state, in writing, the facts found by him or them, as to each claim submitted, and the conclusions of law in relation thereto, separately, and shall report the same, with a form of decree to the district court; and said court may review said report and enter decree thereon, or set aside, alter, or modify the same and enter decree thereon so altered or modified, and, when necessary, may require the referee or referees to amend his or their reports. All the testimony taken by any referee or referees shall be stenographically reported, and the same, together with all other evidence in the matter, shall be transmitted to, preserved, and filed in the office of the clerk of said district court, with the report of such referee or referees. Notice of the filing of the report of the referee or referees shall be given by the clerk, as the court may direct; and exceptions to the findings and report of the referee may be taken by the parties, as the court shall prescribe by rule. '03, p. 95; '05, p. 152.

1282. Id. Effect of decree. The decree shall determine and establish the rights of the several claimants to the use of the water of said river system or water source; and among other things shall set forth the name and postoffice address of the person, corporation, or association entitled to the use of the water; the quantity of water in acre-feet or the flow of water in second feet to be used; the purpose for which the water is to be used; the time during which the water is to be used each year; the name of the stream or other source from which the water is diverted; the priority number of the right; the date of the right, and such other matter as will fully and completely

define the right of said person, corporation, or association to the use of the water. '03, p. 95; '05, p. 153.

1283. Id. Decree may be appealed from. The decree so entered by the district court may be appealed from to the supreme court, in like manner as from decrees and judgments in other cases; provided, that such appeal shall be taken within six months after the entry of said decree, and all proceedings on appeal shall be conducted according to the provisions of the code of civil procedure, and the practice on appeals from the district court to the supreme court. '03, p. 95; '05, p. 153.

1284. Id. Certificate of water right to be issued. If no appeal is taken from said decree within six months after the same has been entered, or, if the case is appealed, within thirty days after the final decree is entered, it shall be the duty of the clerk of the court making said decree to issue to each person, corporation, or association having been awarded the use of water by said decree, a certificate in duplicate, attested under the seal of the court, setting forth the substance of said decree, as specified in Section 1282. One copy of said certificates shall be transmitted, in person or by registered mail, to the appropriator, who shall, within thirty days, have the same recorded in the office of the county recorder of the county in which the water is diverted from its natural channel, and the other shall be delivered to the State Engineer, and filed in his office as part of the records thereof. The letter "A" shall be prefixed to the priority number of each certificate so issued to distinguish it from certificates issued by the State Engineer. '03, p. 95; '05, p. 153.

1285. Proceedings when Judge or Referee is claimant. If the referee shall be a claimant to any water of said river system or water source, all testimony and evidence pertaining to his claim shall be taken by the district court of the county in which the statements are filed; and if the district judge is a claimant of any of the water of said river system or water source, he shall file his statement in the district court of the adjoining district, and a copy of the statement in the court of his own county. In such case the court of the adjoining district shall receive and act upon the referee's report and enter decree in the matter.

For the purpose of advancing the money required for the expenses of district judges, compensation and expenses of referees and compensation and expenses of stenographers, as provided in Sections 1272 to 1285, inclusive, Compiled Laws of

Utah, 1907, there is hereby appropriated and set apart from any moneys in the general fund in the State Treasury the sum of \$8,000, to be known as "Adjudication of water rights fund," which shall be a permanent fund and which shall be used only for the payment of expenses as provided herein.

The sums allowed by the State Board of Examiners, upon certificates of the proper district judge to the State Auditor, for expenses and services paid from the "Adjudication of water rights fund," as herein provided, shall at the conclusion of a water adjudication be certified by the State Auditor to the judge and clerk of the court in which said adjudication has been made, and the same shall constitute a part of the costs and disbursements in said cause. The court, at the time of entry of final judgment in said cause, shall adjudge and determine the proportionate amount of such cost of adjudication, to be paid by each of the parties of said action; and the respective sums so apportioned are hereby declared to be a lien upon the lands and water rights of the said parties, and the said respective sums shall be entered by the auditors of the proper counties upon the assessment roll of the county in which the property is situated opposite the names of the parties respectively required to pay the same, and said sums shall be collected in the same manner and at the same time as other taxes are collected, and shall be placed in a separate fund, to be remitted to the State Treasurer at the same time that other taxes are remitted and be placed by said treasurer in the "Adjudication of water rights fund."

CHAPTER 104.

Session Laws, 1911.

Section 1. Additional duties of State Engineer. In addition to the duties now prescribed by law, the State Engineer shall divide the State into water districts, said districts to be so constituted as to secure the best protection to the claimants for water, and the most economical supervision on the part of the State; said water districts shall not be created until a necessity therefor shall arise; provided, that no water district shall include more than one county.

Sec. 2. Water Commissioners. How appointed. Term. There shall be appointed by the Board of County Commissioners one water commissioner for each water district, who shall

be selected from persons recommended by the State Engineer. Each commissioner shall hold his office until his successor is appointed and shall have qualified; said Board of County Commissioners shall, by like selection and appointment, fill all vacancies which may occur in the offices of water commissioners, and may at any time remove any water commissioner for failure to perform his duties as said water commissioner. '15, p. 115.

Sec. 3. *Id. Bond.* Every water commissioner before entering on his duty shall give a bond to the State in the penal sum of \$1,000 for the faithful performance of his duty.

Sec. 4. *Id. Powers and Duties.* The water commissioners appointed under the provisions of this Act shall be ex-officio officers of the courts within their respective water districts to carry into effect the decree of such courts in relation to the division or distribution of water used within any water district created by the provisions of this act, and it shall further be the duty of the said water commissioner, to divide the water of the natural stream or streams of his district, among the several ditches and reservoirs taking water therefrom, according to the prior right of each, respectively, in whole or in part, and to shut and fasten, or cause to be shut and fastened, the headgates of such ditches, and shall regulate or cause to be regulated, the controlling works of reservoirs, in times of scarcity of water, as may be necessary by reason of the priorities of right existing in said natural streams of his district. Such water commissioner shall have authority to regulate the distribution of water among the various users under any partnership ditch or reservoir where rights have been adjudicated, in accordance with existing decrees. Whenever in the pursuance of his duties, the water commissioner regulates a headgate of a ditch or the controlling works of a reservoir, it shall be his duty to attach to such headgate or controlling works, a written notice, properly dated and signed, setting forth that such headgate or controlling works has been properly regulated, and is wholly under his control and such notice shall be a legal notice as to the facts therein contained to all parties interested in the division and distribution of water of such ditch or reservoir. It shall be the duty of the county attorney to appear and defend any water commissioner who shall be made a defendant in any case which may arise in the pursuance of the official duties of such officer within the county of said attorney.

Sec. 5. **Id.** Said water commissioner shall as near as may be, divide, regulate and control the use of the water of all streams within his district, by such closing or partial closing of the headgates as will prevent the waste of water or its use in excess of the volume to which the appropriator is lawfully entitled, and any person who may be injured by the action of any water commissioner, or by his failure to act pursuant to this Act, may report to the State Engineer, who shall immediately act in the matter and correct or cause to be corrected any wrongful act of such water commissioner if he shall see that injury has been done. Any person dissatisfied with the action of the State Engineer may bring an action in the district court of the county wherein the ditch or ditches from which the controversy arises are situated.

Sec. 6. **Id. Compensation of Commissioners.** Water commissioners herein provided for shall receive such compensation as the Board of County Commissioners shall, from time to time fix, the same to be determined with reference to the extent and character of the service performed by such, to be paid by the county in the interest of which the work is performed. Each water commissioner shall keep a true and just account of time spent by him in the discharge of his duties, and shall present a true copy thereof, verified by oath, to the Board of County Commissioners, and the Board of County Commissioners shall, upon approval thereof by the State Engineer, allow the same. '15, p. 115.

Sec. 7. **Id. Deputies and Assistants. Compensation.** Said water commissioners shall have power, when necessary, to employ deputies or other suitable assistants to aid them in the discharge of their duties. Such assistants shall take the same oath as the water commissioner, and shall obey his instructions, and each shall be entitled to such compensation as his service may demand and as the water commissioner may recommend, not to exceed in any case \$5.00 per day for every day he is employed, such payment to be made upon certificates of the water commissioner, approved by the State Engineer, in the same manner as provided for the payment of the water commissioners; provided that the term of service of such assistant commissioner may be terminated at any time by the water commissioner, and shall not in any case continue after the emergency has ceased to exist.

Sec. 8. Id. May begin work upon written demand of appropriators. When arrangements are not made for the employment of the water commissioner throughout the irrigation season, the said water commissioner shall begin his work upon written demand being made upon him therefor by one or more appropriators. Such written demand for his services shall be attached to his bill for services and forwarded with it to the county commissioners of the proper county. Where the said commissioner is employed by the month, he shall begin work and terminate his services as the State Engineer may direct. The State Engineer may, under any condition, call upon the water commissioner for work within his district, whenever the necessity therefor may in his judgment arise.

Sec. 9. Id. May make arrests. The water commissioners, or their assistants, within their districts shall have power to arrest any person or persons presently offending, and turn them over to the sheriff of the proper county, and immediately upon delivering any such person so arrested into the custody of the sheriff, it shall be the duty of the water commissioner making such arrest, to immediately in writing and upon oath, make complaint before the proper justice of the peace against the person so arrested.

Sec. 10. Headgates and flumes to be maintained. The owner or owners of any ditch or canal, shall maintain to the satisfaction of the water commissioner in which the irrigation works are located, a substantial headgate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by said water commissioner; and such owner shall construct and maintain when required by the water commissioner, flumes or other measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water commissioner in determining the amount of water that is to be diverted into said ditch from the stream, or taken from it by the various users. Any and every owner or manager of a reservoir, located across or upon the bed of a natural stream, shall be required to construct and maintain, when required by the water commissioner, a flume or measuring device of a plan to be approved by the State Engineer, below such reservoir at a point not to exceed six hundred feet distant therefrom, and a flume or measuring device above such reservoir on each and every stream or source of supply discharging into such reservoir, for the purpose of assisting the water commis-

sioner in determining the amount of water to which prior appropriations are entitled and thereafter diverting it for such prior appropriators' use. When it may be necessary for the protection of other water users, the water commissioner has authority to require flumes to be installed along the line of any ditch. If any such owner or owners of irrigation works shall refuse or neglect to construct and put in such headgates, flumes or measuring devices after thirty days' notice to do so by the water commissioner, it shall be the duty of the water commissioner of the district in which such headgate is located, to close such ditch to the passage of water, and the same shall not be opened or any water diverted from the source of supply, under the penalties prescribed by law for the opening of headgates lawfully closed, until the requirements of the water commissioner as to such headgate, flume or measuring device have been complied with, and if any owner or manager of a reservoir located across the bed of a natural stream shall neglect or refuse to put in such measuring device after thirty days' notice to do so by the water commissioner the water commissioner shall open the sluice gate or outlet of such reservoir and the same shall not be closed under penalties of the law for changing or interfering with headgates until the requirements of the water commissioner as to such measuring devices are complied with.

Sec. 11. Commissioners to make reports. The water commissioners when on duty shall make reports whenever called upon to do so by the State Engineer. Such reports shall contain the following information: The amount of water actually coming into the district to supply ditches, canals and reservoirs; whether such supply is on the increase or decrease; what ditches, canals and reservoirs are at that time without their proper supply, and such other and further information as the State Engineer may require.

Sec. 12. Procedure where joint owners disagree. When two or more persons, companies or corporations, joint owners in an irrigation ditch or reservoir, are unable to agree relative to the division and distribution of water received through their ditch, or from their reservoir, it shall be lawful for any such owner or owners or either of them to apply to the water commissioner of the district in which such ditch or reservoir shall be located, by a written notice setting forth such fact, asking the water commissioner to take charge of such ditch or reservoir for the

purpose of making a just division or distribution of the water from the same to the parties entitled to the use thereof. The said water commissioner shall take exclusive charge of such ditch or reservoir, for the purpose of dividing the water therefrom in accordance with rights established by existing decrees or otherwise, and continuing the said work until the necessity therefor shall cease to exist. The water commissioner shall have power to determine the loss in transit of any water of a stream other than the natural flow from a reservoir or other source, by seepage and evaporation, subject to an appeal as provided in this Act. In all cases where the water commissioner or a deputy water commissioner is called upon to divide the waters of a ditch or reservoir between appropriators, when the term of his employment exceeds three consecutive days, he shall be paid in full for his services by the interested water users in proportion to the established rights of each. Any payment not made for the services of such water commissioner after the written demand has been made therefor, the same shall be a lien upon any land or other property not otherwise exempt from execution owned by the interested water user refusing to pay and may be recovered by the water commissioner in any court of competent jurisdiction.

Sec. 13. Rights to use of water restricted. Rights to the use of water shall be limited and restricted to so much thereof as may be necessarily used for irrigation or other beneficial purposes irrespective of the carrying capacity of the ditch, and all the balance of the water not so appropriated shall be allowed to run in the natural stream from which such ditch draws its supply of water, and shall not be considered as having been appropriated thereby.

Sec. 14. Repeal. That Sections 1286, 1287, 1288, 1288x, 1288x1, 1288x2, 1288x3, 1288x4, Compiled Laws of Utah, 1907, be and the same are hereby repealed.

Approved March 20, 1911.

1288x5. Rights to unappropriated water. Rights to the use of the unappropriated water in the State may be acquired by appropriation, in the manner hereinafter provided, and not otherwise. The appropriation must be for some useful or beneficial purpose, and, as between appropriators, the one first in time shall be first in right; (provided that when a use designated by

an application to appropriate any of the unappropriated waters of the State would materially interfere with a more beneficial use of such water, then the application shall be dealt with as provided in Section 1288x10).

1288x6. Application for unappropriated water. Any person, corporation, or association, to hereafter acquire the right to the use of any public water in the State of Utah, shall, before commencing the construction, enlargement, or extension of any ditch canal, or other distributing works, or performing similar work tending to acquire the said right or appropriation, make an application in writing to the State Engineer. Such application shall be upon a blank to be furnished by the State Engineer, and shall set forth the name and postoffice address of the person, corporation, or association making the application; the nature of the proposed use for which the appropriation is intended; the quantity of water in acre feet or the flow of water in second feet to be used, and the time during which it is to be used each year; the name of the stream or other source from which the water is to be diverted; the place on such stream or source where the water is to be diverted, and the nature of the diverting works; and the dimensions, grade, shape, and nature of the proposed diverting channel; and such other facts as will clearly define the full purpose of the proposed appropriation. If the proposed use is for irrigation, the application shall show, in addition to the above required facts, the legal subdivisions of land proposed to be irrigated, with the total area thereof, and the character of the soil. If the proposed use is for developing power, the application shall show, in addition to the above required facts, the number, size, and kind of water wheels to be employed; the head under which each wheel is to be operated; the extent of the power to be produced, and the purposes for which and the places where it is to be used; also, the point where the water is to be returned to the natural stream or source. If the proposed use is for mining, the application shall show, in addition to the above required facts, the name of the mine and the mining district in which it is situated, the nature of the mineral mined, and the place where the water is to be returned to the natural stream or source. The place of diversion and the place of return of the water shall be designated with reference to the United States land corners or mineral monuments, when either the point of diversion or the point of return

shall be situated within six miles of the nearest United States land corner. The storage of water by means of a reservoir shall be regarded as a diversion and the points of diversion in such cases shall be deemed to include the point where the water is taken from the stream and the center of the impounding dam of the reservoir. The lands to be inundated by the reservoir shall be described as nearly as may be, and by Government subdivisions if upon surveyed land, and the area of the surface thereof when the reservoir is filled shall be given. R. S. '98, Sec. 1268, 1269; '03, p. 98; '05, p. 155; '09, pp. 84, 85.

1288x7. Action of Engineer thereon. On receipt of said application it shall be the duty of the State Engineer to make an endorsement thereon of the date of its receipt, and to make a record of such receipt in a book kept in his office for that purpose. It shall be his duty to examine said application and ascertain if it sets forth all the above required facts, and if not, it shall be returned with the statement of correction, amendments, or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refiling thereof. If refiled, corrected as required, within said time the application shall, upon being accepted, take priority as of the date of its original filing, subject to compliance with the further requirements of the law and the regulations thereunder. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling. The date of the return of the application, with the reasons therefor, shall be endorsed on the application and a record made thereof in a book kept for recording applications. Like entries shall be made of the date when corrected applications are received by the State Engineer and of the date when rejected applications are returned to the applicant. Applications for a change of the point of diversion or place of use set forth in an approved application shall be treated as a corrected application within the meaning of this section, excepting that such change of an approved application shall not affect the priority of the original application; provided that no change of the point of diversion or place of use set forth in an approved application shall operate to enlarge the time within which the construction work shall begin or be completed. '03, p. 98; '05, p. 156; '07, p. 248; '09, pp. 85, 86.

1288x8. Notice of application. If not corrected as required, no further proceedings shall be had on such applications, but when filed in compliance with this Title, the State Engineer shall at once at the expense of the applicant, to be paid in advance, publish in some newspaper having a general circulation within the boundaries of the river system or water source from which said appropriation is to be made, a notice of the application showing by whom made; the quantity of water sought to be appropriated; the stream from which the appropriation is to be made, and at what point on the stream; the use for which it is to be appropriated and by what means; which notice shall be published at least once a week for thirty days. It is further provided, that any change in the proposed point of diversion or place of use of water from a stream shall be subject to the approval of the State Engineer, under the provisions of section 1288x24 hereof. '03, p. 98; '05, p. 156; '09, p. 86.

1288x9. Protest may be made. Any person, corporation, or association interested may, at any time within thirty days after the completion of the publication of said notice, file with the State Engineer, a written protest against the granting of said application, stating the reason therefor, which shall be duly considered by said engineer, who shall approve or reject said application. '03, p. 99; '05, p. 157.

1288x10. Applications filed and recorded. Action thereon. All applications which shall comply with the provisions of this title and with the regulations of the State Engineer's office shall be filed and recorded in a suitable book kept for that purpose; and it shall be the duty of said engineer to approve all applications where the proposed use will not impair the value of existing rights, or will not interfere with the more beneficial use of said water, provided, however, that an application for water made by a homesteader, desert entryman or person in possession of land under a contract to purchase the same, such water to be used exclusively upon the land of such person, may be approved without reference to prior conflict; but the State Engineer, upon information furnished by the *State Conservation Commission, or upon his own investigation, or by information in his possession to the effect that there is reason to believe

* See Addenda.

that applications to appropriate water from any stream or other source of water supply within the State will interfere with its more beneficial use for irrigation, domestic, culinary, stock, power, mining or other purposes, it shall be his duty to withhold the approval or refection of such application until he shall have investigated the matter. The cost of such inquiry shall be paid for by the person making application to appropriate water, provided such application is approved, and provided further, that such charge shall not exceed ten dollars per day and expenses to be paid the State Engineer or his deputy, and five dollars per day expenses for each assistant. When the State Engineer is convinced that an application to appropriate water for a designated purpose is not for the most beneficial use, he shall file the application together with a statement of his findings in the District Court in the county where the proposed appropriation is to be made. On the filing of such a statement the District Court in the county where the same is filed shall have exclusive jurisdiction to determine the merits of the case and instruct the State Engineer to approve or reject such application. But, where there is no unappropriated water in the proposed source of supply, or where the proposed use will conflict with prior applications or existing rights, it shall be the duty of the State Engineer to reject such application.

1288x11. Proceedings after action. The approval or rejection of an application shall be endorsed thereon and a record made of such endorsement in the State Engineer's office. The application, so endorsed, shall be returned to the applicant. If approved the applicant shall be authorized, on receipt thereof, to proceed with the construction of the necessary works and to take all steps required to apply the water to the use named in the application and to perfect the proposed appropriation. If the application is rejected, the applicant shall take no steps toward the prosecution of the proposed work, or the diversion and use of the public water, so long as such rejection shall continue in force. '03, p. 99; '05, p. 157.

1288x12. May require additional information. Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interests, and may require a statement of the following facts: In case of incorporated companies, he may require the submission of the articles of incorporation, the

names and places of residence of its directors and officers, and the amount of its authorized and its paid up capital. If the applicant is not an incorporated company, he may require a showing as to the name or names of the party or parties proposing to make the appropriation, and a showing of facts necessary to enable him to determine whether or not they have the financial ability to carry out the proposed work, and whether or not the said application has been made in good faith. '03, p. 99; '05, p. 157.

1288x13. Time for beginning and completing work. In his endorsement of approval on any application, the State Engineer shall require that actual construction work must begin within six months from the date of such approval, and shall state the time within which the construction shall be completed, not exceeding five years from the date of approval; and, in case the application is for irrigation, shall state the time within which water shall be applied to a beneficial use, not exceeding four years in addition thereto. Any applicant feeling himself aggrieved by the endorsements which the State Engineer has made upon his application may appeal therefrom to the District Court of the county in which the point of diversion of the proposed appropriation is situated.

The construction of the works shall be diligently prosecuted to completion, and if one-fifth of the work is not completed within one-half the time allowed, as determined by the State Engineer, he may accept and approve, as herein provided, an application for the use of all or any of the waters included in the application of the prior applicant and the right to use such water under said prior application shall thereupon be forfeited, provided, that before a forfeiture shall be declared by the State Engineer, as provided herein, he shall give the applicant or his assigns sixty days' notice by registered mail to his last recorded address to appear on a date to be designated and show cause, if any he has, why his application shall not be declared forfeited in whole or in part, and on such date the said applicant or his assigns shall be permitted to produce any lawful evidence tending to show compliance on his part with the law. At such hearing the State Engineer shall be authorized to hear and consider any and all competent evidence tending to show whether or not the said applicant or his assigns has or have complied with the law; and, provided further, that the State Engineer shall allow an extension of time on request of the

prior applicant equal to the time during which work was prevented by the operation of law beyond the power of said applicant to avoid.

Provided, That the State Engineer shall have power, for good cause shown, to extend the time for completion of construction or for application to a beneficial use, but in no case shall extensions of time be made that would place the date of proof of completion of construction and the proof of beneficial use more than fourteen years from the date of approval, except that the State Engineer shall allow extensions of time during which work was prevented by the operation of law beyond the power of said applicant to avoid. '11, p. 3.

1288x14. Aggrieved party may bring action. Any applicant or protestant who is dissatisfied with the action of the State Engineer may bring an action in the District Court of the county in which the point of diversion of water proposed to be appropriated is situated, for the purpose of adjudicating the questions involved. Such action must be brought within sixty days of notice of the action of the State Engineer, and if not brought within that time, the Engineer shall proceed in accordance with the action taken thereon by him. But if such action be brought within said time, notice thereof shall be filed with the State Engineer, and thereafter he shall take no further action upon said application or protest until the questions involved are determined by the courts. Upon the determination of the case by the courts, the clerk of the district court in which the decree is filed shall immediately file a certified copy thereof with the State Engineer, and thereupon he shall proceed in accordance with such decree.

And it is further provided that in any case where a decision of the State Engineer is involved, the individual, corporation or association affected by such decision, shall have sixty days to appeal therefrom to the District Court, counting from the date when notice of said decision is given to said individual, corporation, or association. If an appeal be taken, the individual, corporation or association making such appeal shall immediately notify the State Engineer thereof, and thereafter the State Engineer shall take no further action in the case until the court has passed upon the questions involved. Immediately upon the issuance of the decree of the court in such case, a copy thereof shall be filed with the State Engineer by the clerk of said

court, and thereafter the State Engineer shall proceed in accordance with such decree. If no appeal be taken within the time specified, the decision of the State Engineer shall be final. Should no notification of appeal be filed with the State Engineer, as provided in this section, he shall proceed as if no appeal were taken.

1288x15. State Engineer to notify applicant. Upon completion of work proof and map must be filed. Sixty days before the date set for the completion of the works to divert the water sought to be appropriated, the State Engineer shall notify the applicant by registered mail of the date when proof of completion of works shall be due.

On or before the date set for completing the works to divert the water in accordance with his application therefor, the applicant shall make proof thereof, by filing in the State Engineer's office, on blanks to be furnished by the State Engineer, a statement descriptive of the work done. Said statement shall be sworn to by the applicant and by two disinterested witnesses, one of whom shall be a reputable hydraulic engineer and shall be accompanied by a map, profile and drawings, which shall be made on tracing linen and shall show fully and correctly, the location with reference to the United States land surveys; the nature and extent of the completed works; the natural stream or source from which and the place where the water is diverted; the place and manner of connecting with other works or streams; the ground and grade lines, the cross-sections and dimensions of the various forms of the diverting channel; the character of the materials moved and used in construction; the several appliances used to divert, measure and regulate the water; the character of all structures which cross, support or constitute the diverting channel or any part of it and such other matter as will fully and correctly delineate the work done and conform to the general rules and regulations of the State Engineer's office. The map, profile and drawings shall be certified to under oath, by the engineer who has made the same and by the applicant whose works they represent, said certificates to be substantially of such form as the State Engineer shall by general rule prescribe. As soon as proof of completion of the works has been accepted and approved, the State Engineer shall endorse such acceptance and approval upon the applicant's certificate of proof, which shall then be a record of the completion

of the works to divert the water sought to be appropriated. Proof made subsequent to the date set for the completion of the works shall cause the postponement of the priority from the date of the original application to the date when the proof is made and the applications subsequent in time shall have the benefit of such postponement of priority; provided, that in case of works constructed by the National government, the official plans, maps and specifications approved by the proper officer of the Reclamation Service shall be accepted as a full compliance with the requirements of this section, relating to maps, profiles and drawings. '03, p. 100; '05, p. 115; '09, pp. 88, 89; '15, p. 117.

Certificate of Appropriation. Effect of.

1288x16. **State Engineer to notify Applicant.** Sixty days before the date set for the application of the water to a beneficial use, the State Engineer shall notify the applicant by registered mail when proof of application of the water to a beneficial use shall be due. Upon it being made to appear to the satisfaction of the State Engineer that an appropriation has been perfected in accordance with the application therefor, and that the water applied for has been put to a beneficial use, it shall be the duty of the State Engineer to issue a certificate, in duplicate, to the party making the same, setting forth the name and postoffice address of the person, corporation or association by whom the water is to be used; the quantity of water in acre feet or the flow of water in second feet; the purpose for which the water is to be used; the time during which the water is to be used each year; the name of the stream or source from which the water is to be diverted; the place on the stream or source where the water is to be diverted; the date of the appropriation; and such other matter as will fully and completely define the extent and conditions of actual application of the water to a beneficial use; in no manner, however, shall the certificate extend the rights described in the application, as further defined by the certificate of completion. Failure to make proof of beneficial use of the water on or before the date set therefor, shall cause the postponement of the priority from the date fixed theretofore, to the date when the proof of beneficial use of the water is made and applications subsequent in time shall have the benefit of such postponement of priority. One copy of said

certificate shall be filed in the office of the State Engineer, and the other copy shall be delivered to the appropriator and shall within thirty days be recorded by him in the office of the county recorder of the county where the water is diverted from the natural stream or source. The certificate so issued and filed shall be *prima facie* evidence of the appropriator's right to the use of the water in the quantity, for the purpose and during the time mentioned therein and shall be evidence of such right. The provisions of this section shall refer to all certificates issued by the State Engineer. Approved March 17, 1915. '03, p. 101; '05, p. 159; '09, pp. 89, 90. '15, p. 118.

1288x17. Priority. The priority number of an appropriation shall be determined by the date of receiving the written application in the State Engineer's office, except as provided in sections 1288x15 and 1288x16 hereof. Rights claimed under applications for the appropriation of water may be transferred or assigned by instruments in writing. Such instruments when acknowledged or proven and certified in the manner provided by law for the acknowledgment or proving of conveyances of real estate, may be filed and recorded in the office of the State Engineer, and shall from the time of filing the same for record in said office impart notice to all persons of the contents thereof. For recording any such instrument the State Engineer shall collect the same fees as are allowed by law to county recorders for like service, in addition to the fee for filing. '03, p. 101; '05, p. 159; '09, p. 90.

CHAPTER 3.

General Provisions Concerning Water.

1288x18. Waters public property. The water of all streams and other sources in this State, whether flowing above or under the ground, in known or defined channels, is hereby declared to be the property of the public, subject to all existing rights to the use thereof. '03, p. 101; '05, p. 159.

1288x19. Standard of measurement. The standard unit of measurement of the flow of water shall be the discharge of one cubic foot per second of time, which shall be known as a second foot; and the standard unit of measurement of the volume of

water shall be the acre foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred and sixty cubic feet. R. S. '98, Sec. 1282, 1283; '01, p. 143; '03, p. 101; '05, p. 160.

1288x20. Beneficial use. Beneficial use shall be the basis, the measure, and the limit of all rights to the use of water in this State. R. S. '98, Sec. 1262; '03, p. 101; '05, p. 160.

1288x21. Eminent domain. The use of water for beneficial purposes, as provided in this Title, is hereby declared to be a public use. Any person, corporation, or association shall have a right of way across and upon public, private, and corporate lands, or other right of way, for the construction, maintenance, repair, and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, or other means of securing, storing, and conveying water for irrigation or for any necessary public use, or for drainage, upon payment of just compensation therefor, but such right of way shall in all cases be exercised in a manner not to unnecessarily impair the practical use of any other right of way, highway, or public or private road, nor to unnecessarily injure any public or private property. Such right may be acquired in the manner provided by law for the taking of private property for public use. R. S. '98, Sec. 1277; '03, p. 103; '05, p. 160.

1288x22. Id. Right to enlarge existing canal. When any person, corporation, or association desires to convey water for irrigation or any other beneficial purpose, and there is a canal or ditch already constructed that can be enlarged to convey the required quantity of water, then such person, corporation, or association, or the owner or owners of the land through which a new canal or ditch would have to be constructed to convey the quantity of water necessary, shall have the right to enlarge said canal or ditch already constructed, by compensating the owner of the canal or ditch to be enlarged, for the damage, if any, caused by said enlargement; provided, that said enlargement shall be done at any time from the first day of October to the first day of March, or any other time that may be agreed upon with the owner of said canal or ditch. R. S. '98, Sec. 1278; '03, p. 103; '05, p. 160.

1288x23. Water reverts upon abandonment. When the appropriator or his successor in interest abandons or ceases

to use water for a period of seven years, the right ceases, and thereupon such water reverts to the public, and may be again appropriated, as provided in this Title; but questions of abandonment shall be questions of fact, and shall be determined as are other questions of fact. R. S. '98, Sec. 1262; '03, p. 101; '05, p. 160.

1288x24. Place of diversion may be changed. Vested rights protected. Any person, corporation, or association entitled to the use of water, may change the place of diversion and may use the water for other purposes than those for which it was originally appropriated, but no such change shall be made, if it impairs any vested right, without just compensation; no change of point of diversion or purpose of use shall be made except on the approval of an application of the owner by the State Engineer. Before the approval of an application the State Engineer must, at the expense of the applicant, to be paid in advance, give notice thereof by publication in some newspaper having general circulation within the boundaries of the river system or water source in which the point of diversion of the water is located; such notice shall give the name of the applicant, the quantity of water involved, the stream or source from which the appropriation has been made, the point on the stream or source where the water is diverted, the point to which it is proposed to change the diversion of the water, the place, purpose and extent of present use, and the place, purpose and the extent of proposed use. Said notice to be published at least once a week for a period of thirty days. Any person, corporation or association interested, may at any time within thirty days after the completion of the publication of said notice, file with the State Engineer a protest against the granting of said application for change of point of diversion or purpose of use, stating the reason therefor, which shall be duly considered by the State Engineer who shall approve or reject said application for change of point of diversion or purpose of use. Such application shall not be rejected solely for the reason that such change would impair vested rights of others, but the application if otherwise proper may be approved conditionally upon such conflicting rights being acquired. The determination of the State Engineer shall be final unless appeal is taken to the district court of the county in which the point of diversion of water is situated, within sixty days of notice of action of the

State Engineer. Any person holding an approved application for the appropriation of water may change the point of diversion or place of use under proceedings taken substantially as above set forth. R. S. '98, Sec. 1263; '03, p. 102; '05, p. 160; '09, pp. 90, 91.

1288x25. Water may be commingled and recovered. Any appropriated water may be turned into the channel of any natural stream, or into a reservoir constructed across the bed of any natural stream, and commingled with its waters and then be taken out, either above or below the point where emptied into the channel, but, in so doing, the original water in such stream or reservoir must not be diminished in quantity or deteriorated in quality.

1288x26. Headgates. Every person, corporation, or association using water in this State shall construct and maintain a substantial headgate at the point where the water is diverted, and a measuring device, as near the head of the diverting channel as is practicable, for the purpose of regulating and measuring the quantity of water that may be diverted into the channel from the stream or other source. Said headgate and measuring device shall be of such pattern as the State Engineer shall approve, and shall be constructed within thirty days after request from him. Any person, corporation, or association failing to comply with the provisions of this section shall be guilty of a misdemeanor, and the State Engineer is hereby authorized to furnish plans and bills of material for such devices, at the expense of the State, when in his judgment the use of such devices will be encouraged thereby. '01, p. 145; '03, p. 102; '05, p. 161.

1288x27. Priority among appropriators. Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator shall be entitled to receive the whole supply to which his certificate entitles him before any subsequent appropriator shall have any right; provided, that whenever the natural flow of any stream shall have receded in volume in the annual low water stage, then the rights of all users to such flow at such stage shall be deemed to be equal as to priority, and the water, when at or below such stage, shall be apportioned pro rata among said users. But in times of scarcity, while priority of appropriation

shall give the better rights as between those using water for the same purpose, the use for domestic purposes shall have preference over use for all other purposes, and use for agricultural purposes shall have preference over use for any other purpose except domestic use. R. S. '98, Sec. 1265; '03, p. 102; '05, p. 161.

1288x28. Stock may be taken in other irrigation companies. Any irrigation or reservoir company, incorporated and existing under the laws of this State, may purchase or subscribe for the capital stock of any other similar corporation which, at the time of such purchase or subscription, shall be or is about to be incorporated; provided, that such purchase or subscription shall be made only when permitted by the original articles of incorporation or by amendment thereto proposed and adopted according to law, and such corporations are hereby permitted and authorized to amend their articles of incorporation so as to authorize such purchase or subscription. R. S. '98, Sec. 1276; '03, p. 102; '05, p. 162.

1288x29. Ditches must be kept in repair to prevent damage. The owner or owners of any ditch, canal, flume, or other water course shall maintain the same in repair, so as to prevent waste of water or damage to the property of others. Such persons are required, by bridge or otherwise, to keep such ditch, canal, flume, or other water course in good repair where the same crosses any public road or highway, so as to prevent obstruction to travel, or damage or overflow to such public road or highway. R. S. '98, Sec. 1279; '03, p. 103; '05, p. 162.

1288x30. Each person or corporation liable for proportionate expenses. When two or more persons, companies, or corporations are associated by agreement or otherwise, in the use of any dam, canal, reservoir, ditch, flume, or other means of conserving or conveying water for the irrigation of land, or for other purposes, each of them shall be liable to the other for the reasonable expenses of maintaining, operating, and controlling the same, in proportion to the share in the use or ownership of the water to which he is entitled. If any person, company, or corporation refuses or neglects to pay his proportion of such expense, after five days' notice in writing demanding such payment, he shall be liable therefor in an action for contribution; provided, that in any company or corporation owning or controlling more than one canal or ditch, for the purpose of improv-

ing or keeping the same in repair, the users of water shall not be required to pay any expenses or assessments in any canal or ditch, other than the one in which they are directly interested. R. S. '98, Sec. 1280; '03, p. 103; '05, p. 162.

1288x31. Water rights appurtenant to land under government works. All water hereafter appropriated for irrigation purposes from works constructed or controlled by the United States shall be appurtenant to specified lands owned or occupied by the persons claiming the right to use the water, so long as the water is used beneficially thereon; provided, that if for any reason it should at any time become impracticable to use water beneficially or economically for the irrigation of any land to which the right of the same is appurtenant, said right may be severed from said land, and simultaneously transferred, and become appurtenant to other land, without losing priority of right theretofore established, if such change can be made without detriment to existing rights; and in case of such change, the owner of such water right shall execute and acknowledge a proper instrument of transfer describing therein the land from and to which such water is transferred, which instrument shall be recorded in the county recorder's office of the county in which the land is situated. '05, p. 162.

1288x32. Rights to water pass with land. Exceptions. A right to the use of water appurtenant to the land shall pass to the grantee of such land, and, in cases where such right has been exercised in irrigating different parcels of land at different times, such rights shall pass to the grantee of any parcel of land on which such right was exercised next preceding the time of the execution of any conveyance thereof; subject, however, in all cases to payment by grantee of any such conveyance of all amounts unpaid on any assessment then due upon any such right; provided, that any such right to the use of water, or any part thereof, may be reserved by the grantor in any such conveyance, by making such reservation in express terms inserted in such conveyance, or may be separately conveyed. R. S. '98, Sec. 1281; '03, p. 104; '05, p. 163.

1288x33. Water rights transferred by deed. Exceptions. Water rights shall be transferred by deeds, in substantially the same manner as real estate, except when they are represented by shares of stock in a corporation, and such deeds shall be recorded in the office of the recorder of the county where the

place of diversion of the water from its natural channel is situated. Every deed of water right so recorded shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lien holders shall be deemed to purchase and take with notice. '03, p. 104; '05, p. 163.

1288x34. Id. Deeds must be recorded. Every deed of water right within this State hereafter made, which shall not be recorded as provided in this title, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same water right, or any portion thereof, where his own deed shall be duly recorded. '03, p. 104; '05, p. 163.

1288x35. Penalty. Any person, corporation, or association who shall in any way interfere with, injure, destroy, or remove any dam, headgate, weir, or other appliance for the diversion, apportionment, or measurement of water, or who shall interfere with any of the persons authorized by this title to apportion water, while in the discharge of their duties, shall be guilty of a misdemeanor, and shall also be liable in damages to any person injured by such unlawful act. '03, p. 104; '05, p. 163.

1288x36. Obstructions to right of way forbidden. Whenever any person, corporation, or association has the right of way for canals or other water courses, it shall be unlawful for any person to place or maintain in place any obstruction, by fence or otherwise, along or across such canals or water courses, without providing gates sufficient for the passage of the owners of such canals or water courses or their agents. Any person, corporation, or association violating the provisions of this section shall be guilty of a misdemeanor. R. S. '98, Sec. 1286; '03, p. 104; '05, p. 163.

1288x37. Legal Advisers to State Engineer. In all matters requiring legal advice in the performance of his duties and the prosecution or defense of any action growing out of the performance of his duties, the Attorney General of the State, and the district attorney of the district in which any legal question arises, shall be the legal advisers of the State Engineer, and they are hereby required to perform any and all legal services required of them by him, without other compensation than their salaries now or hereafter fixed by law. '03, p. 105; '05, p. 164.

1288x38. Assistants and equipment. For the purpose of carrying into effect the provisions of this title the State Engi-

neer shall have power to employ all necessary assistants, purchase all necessary equipment, and do all other necessary things, the cost of which shall be paid by the State, upon presentation to the State Auditor of monthly statements, certified by the State Engineer and approved by the State Board of Examiners; provided, that no expense shall be incurred by the State Engineer in the performance of his duties which will exceed the amount appropriated for that purpose. '01, p. 142; '03, p. 105; '05, p. 165.

1288x39. Fees of referee and stenographer. The fees of referee and stenographer shall be fixed by the court, and, together with any other expenses not herein provided for that may be incurred in carrying out the provisions of this title, shall be paid out of the State Treasury, upon certificates from the proper district judge to the State Auditor of the amount due each person for such service. '30, p. 105; '05, p. 165.

1288x40. Who may be made parties to action. Damages joint ownership. In any action hereafter commenced for the protection of rights acquired to water under the laws of this State, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to such action, and the court may in one judgment settle the relative priorities and rights of all the parties to such action. When damages are claimed for the wrongful diversion of water in any such action, the same may be assessed and apportioned by the jury in their verdict, or by the court if the case be tried without a jury, and judgment thereon may be entered for or against one or more of several plaintiffs, or for or against one or more of several defendants, and may determine the ultimate rights of the parties between themselves. In any action concerning joint water rights, or joint rights in water ditches, unless partition of the same is asked by the parties to the action, the court shall hear and determine such controversy as if the same were several as well as joint. R. S. '98, Sec. 1274; '03, p. 105; '05, p. 165.

1288x41. Effect of certain repeal. The repeal by the Revised Statutes of sections 2403-2427, both inclusive, of the Compiled Laws of Utah, 1888, shall not be construed to affect the existence of any district or company organized under the aforesaid sections; but any such company or district shall, notwithstanding such repeal, continue in existence with all the rights, privileges, and limitations heretofore conferred or imposed upon

it by law, until disincorporated or dissolved according to law. In any case in which an irrigation company or district shall have a right of action against a delinquent member of such company or district for the non-payment of taxes voted according to law the board of directors thereof may proceed to sell the interest of such member in the canals or ditches of such company or district and his right to the use of the water flowing therein. R. S. '98, Sec. 1287; '03, p. 106; '05, p. 165.

1288x42. Dissolution of irrigation districts. Whenever a petition is presented to the board of trustees of any irrigation company or district organized under section 2403-2427, C. L. U. 1888, signed by one-fourth of the landholders in the district, asking for the abandonment of further operations by the company or district, the board of trustees thereof shall call a special meeting at which the question of such abandonment shall be submitted. Notice of the time and place and subject of such meeting shall be given by the board of trustees of the district at least ten days previous thereto by advertising at least three times in some newspaper having general circulation in the district, or by posting notices in three public places therein. If three-fifths of the landholders of the district voting at such election shall vote for such abandonment, it shall be the duty of the board of trustees to petition the district court of the county in which the greater portion of the lands of the district are situated for the winding up of the affairs of such company or district; and thereafter proceedings shall be had which shall conform as nearly as may be with the proceedings for the voluntary dissolution of corporations. R. S. '98, Sec. 1288; '03, p. 71; '05, p. 166.

1288x43. "Received" and "filed" defined. Whenever the word "received" is used in this title, with reference to any paper deposited in the office of the State Engineer, it shall be deemed to mean the date when such paper was first received at the State Engineer's office; and whenever the term "filed" is used in such reference, it shall be deemed to mean the date when such paper was completed and filed in said office. '05, p. 166.

1288x44. Repeal. Chapter 100 of the laws of Utah, 1903, and all other laws and parts of laws in conflict with the provisions of this Title, are hereby repealed; but such repeal shall not affect any vested rights, and any person, corporation, or

association who may have heretofore filed notice of appropriation of water, or initiated any right under the provisions of said law, or any other law heretofore in force in this state, may complete and perfect such appropriation or right in the same manner and with like effect as if this repeal had not been made; and such right may be perfected in accordance with the provisions of the law under which the right was initiated or under the provisions of this Title; nor shall such repeal prevent the water commissioner appointed under the Act of 1901 from performing the duties therein prescribed, until they are superseded by the appointment of division superintendents and district supervisors as provided in this Title, and, if necessary, other water commissioners may be appointed in the manner provided in said title, to serve until they are superseded, as provided therein. '05, p. 166.

970x. Fees of State Engineer. The State Engineer shall collect the following fees, which shall be paid by him into the state treasury on the first Monday in January, April, July and October of each year:

For examining and approving plans and specifications for any dam, one dollar for each and every foot in height of the dam to be built; and, if necessary to inspect the site where the dam is to be built, an additional charge of ten dollars per day and expenses shall be made.

For inspecting any diverting works by request, ten dollars per day and expenses.

For examining and filling applications to appropriate any quantity of water up to and including ten cubic feet per second, for each such application two and one-half dollars.

Application for water that specify quantities greater than ten cubic feet per second, a fee of one dollar for each cubic foot above the the cubic feet hereinbefore mentioned.

For applications which contemplate the storage of water, a minimum fee of two and one-half dollars for each such application.

Application for water that specify quantities greater than five hundred acre-feet, a fee of two cents for each acre-foot of water to be stored in excess of five hundred acre-feet.

Provided, however, that when the filing fee for any application for water shall exceed \$1,000, the balance of the fee in excess of \$1,000 may, at the option of the applicant, be paid at the time when proof of the completion of the works is submitted.

For examining map, profile and drawings that are part of the proof of appropriation, five dollars.

For approving and recording completed applications, two and one-half dollars.

For issuing certificates of appropriation, each, one dollar.

For examining and filing notices of protest, each, two and one-half dollars.

For filing any other paper, one dollar.

Affidavits, decrees, and other instruments attached to a protest shall be considered other papers within the meaning of this section, and for each such, a fee of one dollar shall be charged.

For certified copy of any paper, per folio, twenty cents.

For blue print copy of any map, profile or drawing, per square foot, ten cents.

For each certificate to copy of paper, drawing or map, fifty cents; provided, that the provisions of Section 970x shall not apply to works prosecuted under the supervision of the United States Reclamation Service.

Sec. 2. This act shall take effect upon approval.

Approved January 31, 1911.

CHAPTER 84.

IRRIGATION AND WATER RIGHTS COMMISSION.

An Act Creating a State Board to Be Known as the "Irrigation and Water Rights Commission," Fixing the Manner of Appointment and the Compensation of the Members Thereof, and Prescribing Their Powers and Duties.

Be it enacted by the Legislature of the State of Utah:

Section 1. **Commission created. Membership. Term.** A Board of Commissioners is hereby created to be known as the "Irrigation and Water Rights Commission," which shall consist

of five members, the State Engineer, the Attorney General, the President of the Agricultural College, and two members appointed by the Governor, one of whom shall be a practical irrigator, and one of whom shall be a person, who in the past has dealt with the water rights and the development of the water resources of the State. The term of the appointive members shall expire November 1, 1916.

Section 2. Organization. Quorum. The officers of said commission shall be a chairman and a secretary. Three members of said commission shall constitute a quorum for the transaction of business. Within thirty days after its appointment, said members of the commission shall meet at the State Engineer's office and organize by electing one of their number chairman, and one of their number secretary.

Section 3. Compensation. Expenses. The State Engineer, the Attorney General, and the President of the Agricultural College shall receive no compensation for their services upon said commission. The two remaining members appointed by the Governor shall each receive a compensation of \$4.00 per day for each day that actual services are rendered. Each member of the commission shall receive his actual necessary expenses in the performance of his official duties.

Section 4. Powers and Duties. Report to Legislature. Meetings. The duties and powers of the commission shall be as follows:

To make a careful and complete investigation of the conditions existing throughout the State with respect to irrigation and water rights with a view of ascertaining what changes in the present irrigation and water right laws are expedient and desirable.

To study and investigate the irrigation and water laws of other states with a view of ascertaining their practicability.

To make a report of their investigations to the twelfth session of the Legislature, and recommend such changes in the present irrigation and water right laws as, in their judgment, will improve conditions existing throughout the State, such report to be printed in pamphlet form and a copy thereof mailed to each member of the State Legislature and to each member-elect on or before the 15th day of November, 1916.

As a part of its report, the commission shall prepare a bill

covering the appropriation, adjudication, and administration of water rights within the State of Utah, which said bill shall be in complete form for introduction in the twelfth session of the Legislature.

Said commission is authorized and empowered to do any and all things necessary to make a full and complete investigation of the matters and things hereinbefore enumerated, and to that end to employ all necessary clerical and expert assistance, and to make all field investigations necessary. The said commission is hereby authorized to arrange for and hold meetings throughout the State with irrigators and people interested in water right legislation; for the purpose of obtaining information first-hand as regards existing conditions, and to that end the commission is authorized to compel the production of records and papers, and to subpoena witnesses and take testimony; and the members of said commission are hereby authorized to administer oaths to witnesses, Section 4101, Compiled Laws of Utah, 1907, relative to the attendance and examination of witnesses is made applicable hereto. County Sheriffs are hereby authorized and directed to serve any and all subpoenas and orders, or other process that may be issued by the chairman of said commission.

Section 6. Claims. How Paid. All claims and expenses incurred by the commission shall be approved by the State Board of Examiners, and paid by warrants of the State Auditor.

Section 7. Appropriation. There is hereby appropriated out of any moneys in the State Treasury, not otherwise appropriated, the sum of \$8,000.00, or so much thereof as may be necessary for the purpose of this Act.

Approved March 17th, 1915.

ADDENDA

CHAPTER 137.

STATE CONSERVATION COMMISSION.

**An Act Amending Section 3, Chapter 103, Laws of Utah, 1909,
Relating to the Duties of the Utah State Con-
servation Commission.**

Be it enacted by the Legislature of the State of Utah:

Section 1. Section Amended. That Section 3, Chapter 103, Laws of Utah, 1909, be and the same is hereby amended to read as follows:

3. Duties of Commission... It shall be the duty of said Commission to investigate and ascertain the natural resources of the State, to adopt and carry out such policies and measures as will prevent waste of the same, and to co-operate with the National Conservation Commission, Conservation Commissions of other states, with departments, bureaus, and officers of the United States, and with departments, commissions and officers of the State of Utah, in any way that shall have for its objects the investigation and conservation of the natural resources of the State of Utah. And it shall also (be) the duty of the commission to inquire whether the waters of any stream or other source of water supply situated within this State can be wholly utilized for irrigation on lands lying under that source of water supply, and if not whether such waters can be used for purposes other than irrigation, which are more beneficial to the public good.

The Commission shall also inquire whether the waters of any stream or other source of water supply, if utilized for power purposes, would interfere with the storage of water for purposes more beneficial to the public good.

A report of the findings of the Commission in such matters shall be made to the State Engineer.

Approved March 20, 1911.

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